IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.869 OF 2000

IN

APPEAL NO.621 OF 2000

IN

ARBITRATION PETITION NO.4 OF 1986

1.Sunit C. Khatau, since deceased
by heirs,
1(a) Smt.Panna Sunit Khatau & ors. ...Appellants.

vs.

1.Dilip Dharmsey Khatau & ors. ...Respondents.

And

2(a) Mrs.Krishnabai Abhay Khatau
and others. ...Proposed Respondents.

Mr.Rajiv Narula i/b. Jhangiani, Narula & Associates, for Appellants in supportr.

Mr.Jai Chinoy i/b. M/s.Kanga & Co., for Respondent nos.1,3 to 5.

Mr.S.H.Doctor i/b. M/s.Malvi Ranchhoddas & Co., for Respondent no.8.

Mr.Misquitto i/b. M/s.Eastley Lam & Co., for Respondent no.8.

Mr.M.K.Ghelani i/b. M/s.Law Charter, for Respondent nos. 2(a) to 2(c).

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 9th August,2007.

P.C.:-

1. This is a chamber summons taken out by the appellants for bringing legal representatives of respondent no.2 on record. The name of respondent no.2 was Abhey Laxmidas Khatau. The following facts are relevant for deciding this chamber summons. In the appeal, the order passed by the learned Single Judge in relation to the objections filed to the Award made by the learned Arbitrator under the Arbitration Act,1940 is challenged. Admittedly, the arbitration petition was heard by the learned Single Judge in

October,1997 and the petition was closed for orders. Abhay Khatau who was the respondent in that petition died on 21.4.1998. The order in the Arbitration petition was pronounced on 5.10.1998 but the copy of the order was not available. An application for the same was made and the copy became admittedly available to the parties on 17.5.2000. The present appeal was filed on 9.6.2000 showing Abhey Khatau as respondent no.2. This chamber summons was taken out on 26.7.2000. The learned Counsel appearing for appellants relying on the judgment of the Supreme Court in the case “State of Kerala Vs. Sridevi and others, 2000(9) SCC 168”, submits that as the death of respondent no.2 occurred after the case was closed for orders, in view of the provisions of Order 22 Rule 6 of the Civil Procedure Code, there is no question of legal representatives being brought on record, the chamber summons of the appellant therefore, has to be treated as an application under Order 1

Rule 10 of C.P.C and therefore, according to him, limitation for making of application is three years from the date of death, and therefore, the chamber summons has been taken out within the period of limitation. He submits that his application is to be treated as an application under Order 1 Rule 10 of C.P.C., and as the name of Abhey was shown as respondent no.2 though he was dead because of the bonafide mistake, the chamber summons deserves to be allowed.

2. We have heard the learned Counsel appearing for respondents as also the learned Counsel appearing for proposed respondents i.e. legal representatives of the deceased. They did not dispute that the present chamber summons has to be treated as an application under Order 1 Rule 10 of C.P.C. They also did not dispute that the application has been made within the period of limitation prescribed by the law. Their submission is that the Court can grant an

application made under Order 1 Rule 10 of C.P.C. if the proceedings in the name of a wrong person are instituted due to bonafide mistake. They pointed out that Mr.Abhey was closely related to the appellants, they were aware of his death as also the date on which the death occurred. They were also aware of the names of his legal representatives. It is also claimed that the Advocate appearing for the appellants were informed by the respondents by communication dated 6.5.1998 that Abhey has expired and they also disclosed names of the legal representatives of deceased Abhey. According to the respondents and the proposed legal representatives, therefore, institution of the appeal in the name of Abhey cannot be said to be because of any bonafide mistake. Perusal of the affidavit filed in support of the chamber summons shows that it is not even claimed that the appeal came to be filed showing Abhey as respondent no.2 due to any bonafide mistake. The reason given in

the affidavit filed in support of the chamber summons is that the intimation that Abhey has died and the names of legal representatives, are given late by the Advocate appearing for respondents. Therefore, in our opinion, the criticism that is made in the affidavit filed in reply to the chamber summons by the learned Counsel appearing for the proposed legal representatives and the respondents is justified. It is clear from the material placed before us that the appellants were aware about the death of Abhey Khatau immediately on the occurrence of death because they were closely related and there is reason to believe that they were also knowing names of the legal representatives of Abhey. It also appears that the lawyer of Mr.Abhey was informed about the names of the legal representatives in any case by May,1998. Still while filing the appeal, Mr.Abhey was shown as respondent. In our opinion, it becomes clear that this was so not because of any failure on

the part of the appellants but most probably because of the negligence on the part of the lawyer representing the appellants. In our opinion, therefore, for the mistake committed by the lawyer it would not be appropriate to deny the appellants an opportunity to put their house in order and to bring the legal representatives of deceased on record. However, in our opinion, the appellants will have to pay substantial cost to the legal representatives. In our opinion, therefore, the following order would meet the ends of justice:-

The chamber summons is granted in terms of prayer clause (b) and (c).

The appellants are directed to pay to three legal representatives of deceased Abhey as and by way of cost of this chamber summons Rs.10,000/- each.

Amendment to be carried out within a period of two weeks from today.

Chamber summons is disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA,J.)